

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

AFSCME COUNCIL 65, AFL-CIO

Employer

and

MINNESOTA INDEPENDENT FIELD STAFF &
CLERICAL ASSOCIATION

Union/Petitioner

Case 18-UC-419

DECISION AND ORDER

The Union/Petitioner (Petitioner) seeks to include the Organizing Director classification in an existing bargaining unit consisting of field staff and clerical employees employed by the Employer. Petitioner's position is that the duties of the Organizing Director are not significantly different from those of organizers, who are included in the bargaining unit. On the other hand, the Employer contends that the Organizing Director should be excluded from the bargaining unit on the basis that it is a supervisory position within the meaning of Section 2(11) of the Act. The Employer further contends that the Union has agreed to exclude the Organizing Director position from the bargaining unit in the future, and therefore that the petition should be dismissed regardless of the Organizing Director's Section 2(11) status.

Based on an administrative investigation, I conclude that the petition should be dismissed.

Under Section 3(b) of the Act, I have the authority to decide this matter on behalf of the National Labor Relations Board. Upon the entire file in this case, I find:

(1) The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

(2) Petitioner claims to represent certain employees of the Employer.

The Employer is a labor organization. Petitioner represents field staff and clerical employees employed by the Employer. The current contract between the Employer and Petitioner is effective from January 1, 2006 until December 31, 2008. On March 6, 2007, the Employer's Executive Board at an Executive Board meeting created a new job classification and adopted a job description for the new classification. The classification created is the position of Organizing Director, which is the subject of this petition. Petitioner representatives were present at this Executive Board meeting and argued to the Employer that the Organizing Director classification should be included in the bargaining unit. The Employer disagreed. Minutes of this meeting reflect that Petitioner and the Employer "agree to disagree." Petitioner again raised the issue of the unit status of the Organizing Director classification at the meeting of the Executive Board on October 11, 2007, when the Executive Board was to select a person for the position. Then staff member Dean Tharp was named to the position of Organizing Director at this meeting. However, no agreement was reached at that time on the unit status of the position.

In April 2008, Petitioner and the Employer began bargaining for a collective bargaining agreement that would go into effect January 1, 2009. The last bargaining session occurred on May 6, 2008, and thereafter the parties signed a new collective bargaining agreement to be effective from January 1, 2009 until December 31, 2011. The recognition clause of the new collective bargaining agreement specifically excludes the position of Organizing Director. Thus,

¹ The Employer, Minnesota Council 65 of the American Federation of State, County, & Municipal Employees, a Minnesota corporation with an office and place of business in Nashwauk, Minnesota, is engaged in the representation of employees for the purpose of collective bargaining. During calendar year 2007, a representative period, the Employer earned gross revenues in excess of \$100,000, of which more than \$50,000 was remitted to its international body located in Washington D.C.

Petitioner acknowledges that it has agreed to exclude the Organizing Director classification from the bargaining unit effective January 1, 2009, but Petitioner asks me to find that the classification is in the unit until then.

I conclude that unit clarification is inappropriate for two reasons. First, this petition is untimely. Second, unit clarification is inappropriate for temporary placement of a classification in a unit.

First, this petition is untimely. I acknowledge that normally unit clarification is appropriate when an employer has created a new classification during the term of a contract. However, in this case the Employer created the Organizing Director position over ten months before this petition was filed, and further, the Employer selected a candidate for the position in the fall of 2007, nearly seven months before Petitioner filed this petition. Moreover, Petitioner filed this petition after it had agreed to exclude the Organizing Director position from the unit, effective January 1, 2009. (However, the contract effective January 1, 2009 does not explain the basis for the exclusion, and therefore does not explicitly state that the basis is because the Organizing Director is a supervisor within the meaning of Section 2(11). In view of these unique facts, I conclude that the petition herein is not timely. *Union Electric Co.*, 217 NLRB 666 (1975); *Columbia Gas Transmission Corp.*, 213 NLRB 111 (1974). See also, *United Parcel Service*, 303 NLRB 326, 327 (1991) (“If a group of employees comes into existence during the term of a contract for an existing unit, then the parties must timely address the unit status of the employees prior to executing a successor agreement.”))

Second, unit clarification is inappropriate when the purpose is to argue for temporary placement of a position in the unit. While I have not found a Board case that contains facts parallel to the unique facts of this case, I note that the Board’s clear-stated policy regarding unit clarification is to avoid disruption of a bargaining relationship. See, *Edison Sault Electric Co.*

313 NLRB 753 (1994). It is difficult to imagine a more disruptive situation than to order a classification be included in a unit in this matter, where Petitioner waited over ten months after creation of the position to file the petition, and where Petitioner had already agreed to exclude the position effective less than seven months after the filing of the petition. In essence, Petitioner is asking that I clarify the existing unit to include the Organizing Director classification for a period of less than seven months, and even that short period of time assumes that the clarification would have issued very shortly after the petition was filed.

In deciding to dismiss this petition, I find it unnecessary to engage in a full investigation or conduct a hearing concerning the supervisory status of the Organizing Director.

ORDER

IT IS HEREBY ORDERED that the petition for unit clarification is dismissed.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 14, 2008.

In the Regional Office's original correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the web site, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to

E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Signed at Minneapolis, Minnesota, this 30th day of June, 2008.

/s/ Robert W. Chester

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